UNITED STATES CIRCUIT COURT

DISTRICT OF NEW JERSEY.

NATIONAL PHONOGRAPH COMPANY,

Complainant,

vs. : IN EQUITY.

AMERICAN GRAPHOPHONE COMPANY, and COLUMBIA PHONOGRAPH COMPANY,

Defendants.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

National Phonograph Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal office at West Orange, County of Essex in said State, brings this, its Bill of Complaint against the American Graphophone Company and Columbia Phonograph Company, corporations organized and existing under and by virtue of the laws of the State of West Virginia, and having a joint place of business at Paterson, Passaic County, State of New Jersey, and in said District.

And thereupon your orator, complains and says:

1. Your orator avers that ever since its incorporation in 1896, it has been engaged in the manufacture at its factory at West Orange, New Jersey, of phonograph records, and in the sale of such phonograph records, and in the sale

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of phonographs manufactured for your orator by the Edison Phonograph Works, said phonographs and phonograph records being manufactured and sold under patents granted to Thomas A. Edison; and your orator alleges on information and belief, that the defendant, American Graphophone Company, for many years past has manufactured at Bridgeport, Connecticut, a special type of phonograph, known as the graphophone, and records therefor, under license of certain of said patents of Thomas A. Edison, which graphophones and records have been sold by defendant, Columbia Phonograph Company; and your orator alleges that phonograph records and graphophone records are of substantially the same size so that either may be used interchangeably upon phonographs or graphophones.

2. Your orator alleges that since February 1, 1902, your orator has manufactured and sold to the extent of many millions annually, a new and distinct type of phonograph molded records, having certain special and unique characteristics, by reason of which said molded records have been associated in the public mind with your orator's name and reputation; said phonograph molded records were and are of a brilliant polished appearance, of an intensely black color, very hard and durable and provided on their interior with a series of concentric ribs for engaging the mandrel of the phonograph.

3. Your orator alleges that for the manufacture of said phonograph molded records, it employs intricate and complicated processes, necessitating labor of the highest skill and involving tedious and expensive operations, and your orator employs musical, artistic and dramatic performers of the highest skill and ability, so that the said molded records sold by your orator are of a very superior

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quality, and have always been recognized as such by the public.

4. Your orator, on information and belief, alleges that the defendant, Columbia Phonograph Company, has been always an active competitor in the business of selling talking machine records for use on phonographs and graphophones, and that prior to about the first day of July, 1903, the defendants made and sold molded records having certain pecularities by which they were fully distinguished in appearance from the molded records made and sold by your orator , inasmuch as the said molded records made and sold by defendants were of a dull brown color, were quite soft, and were so advertised by defendants, and were provided on their interior with a single spiral rib. The said molded records made and sold by defendants prior to about the first day of July, 1903, were fully and completely distinguished from the molded records made and sold by your orator, and except as such molded records were made by defendants by a process which infringed your orator's patents, your orator had no ground, nor did it pretend to have any ground for legitimate complaint against said defendants for making said molded records, since as between your orator's molded records and said molded records made and sold by defendants prior to about the first day of July 1903, there could be no question of unfair competition, nor would the public be likely to be deceived in mistaking one product for the other.

5. Your orator on information and belief, alleges that the molded records made and sold by defendants prior to about the first day of July, 1903, were greatly inferior

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to your orator's molded records, both in quality and in appearance, and particularly in the respects by reason of which the two types of molded records were distinguished from each other; and although the defendant, Columbia Phonograph Company, attempted to sell its said molded records for the same price as your orator's molded records, namely, fifty cents each, the public preferred your orator's molded records and refused to purchase defendant's said molded records, except in small quantities and in localities where your orator's molded records could not be obtained. Thereupon, finding it impossible to successfully compete with your orator, and seeking to derive some benefit from your orator's business reputation and good will, and to thereby deprive your orator of its free and unrestricted right to market goods of a special peculiarity, with which the public associated your orator's name and reputation, and to thereby work your orator great and irreparable injury, and to deprive your orator of great gains and profits, they, the said defendants jointly conspired to put upon the market molded records which so closely approached the molded records made and sold by your orator, in appearance, as to make it difficult for the average purchaser to distinguish the one from the other. In pursuance of this scheme, the defendant, American Graphophone Company, sometime subsequent to March 1, 1902, began the manufacture of an entirely different variety of molded records than that which it had formerly made, and on or about July, 1, 1903, these new molded records were first sold to the public by the defendant, Columbia Phonograph Company. The new molded records thus made and sold by defendants, embodied and still embody all the general characteristics of appearance that distinguished and distinguish

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your orator's molded records, having the shiny surface and deep black color, being very hard, and being provided on their interior with concentric ribs. And your orator alleges that the action of defendants in making and selling molded records in close imitation of those made and sold by your orator, has resulted in many instances in the direct loss of sales, by reason of the fact that a large number of persons have purchased defendants'molded records, under the belief that they were your orator's molded records, wherefore, your orator has suffered great and irreparable loss and injury.

6. Your orator, on information and belief, alleges that by reason of the superiority of the new type of molded records which your orator introduced to the public, a good market exists for such records at a list price of fifty cents each, and if the unfair and unlawful acts herein complained of had not been committed by defendants, your orators would be able to sell at this figure the maximum number of molded records which your orator has facilities for manufacturing. Your orator alleges that on or about September 1, 1903, the defendants reduced the list price on their molded records to one-half that received by your orator, wherefore, your orator has been compelled to reduce the list price on its own molded records, and is therefore put to the necessity of receiving a smaller profit on its goods than would be the case if the unfair and fraudulent acts herein complained of had not been committed.

7. Your orator alleges that on or about the 30th of October, 1903, your orator, in order to identify its

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molded records, adopted as a trade name for the same, the expression "Gold Moulded" and then and thereafter extensively advertised its molded records to the trade and public generally under the said trade name, and your orator has ever since continued to use and is still using said trade name, and has continued to and is still advertising its molded records under the said trade name and is the exclusive owner thereof. And your orator alleges that the expression "Gold Moulded" at the time your orator adopted the same as a trade name to indicate the molded records manufactured and sold exclusively by your orator, had never been used in this country as a trade name for sound records, and your orator alleges that by reason of the adoption of the said expression "Gold Moulded" as a trade name by your orator and by the advertisements of your orator and by the sale of molded records under the said trade name by your orator throughout the United States, the said expression became and is now associated in the mind of the public in this country with the molded sound records manufactured and sold exclusively by your orator, as hereinbefore set forth.

8. Your orator, on information and belief, alleges that notwithstanding your orator's exclusive rights in and to the said trade name, and contriving still further to injure your orator and in violation of principles of fair competition in business, and subsequent to the 31st day of October, 1903, and prior to the filing of this Bill, the defendants fraudulently and with intent to deceive the public, adopted the same name "Gold Moulded" and applied and is now applying the same to the molded records

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manufactured and sold by them and have used and are still using the said name in advertisements of said records, wherefor your orator, also on information and belief, alleges that a large number of purchasers intending to buy the molded records sold exclusively by your orator, have been and are being, by reason of the practices and misrepresentations of defendants, deceived into buying the molded records sold by the defendant, Columbia Phonograph Company, whereby your orator has been directly injured by loss of sales so incurred.

9. Your orator alleges that by reason of the unfair and fraudulent acts and practices of defendants as hereinbefore set forth, your orator has suffered great and irreparable loss and injury, and by which your orator has been and is still being deprived of great gains and profits, which it might and otherwise would have obtained, but which have been received and enjoyed by the said defendants through their said unlawful acts and doings. And your orator alleges that the said defendants threaten and have threatened to continue the said unfair, unlawful and fraudulent acts and practices, although requested by your orator, to desist from the same.

10. Your orator alleges that the amount of controversy herein exceeds the sum or value of two thousand dollars exclusive of interest and costs.

And your orator therefore prays as follows:

1. That the defendants, American Graphophone Company, and Columbia Phonograph Company may be required by a decree of this Honorable Court to account for and pay over

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to your orator such gains and profits as have accrued or arisen or been earned or received by said defendants, by reason of said unlawful doings, and of such gains and profits as would have accrued to your orator, but for the unlawful doings of said defendants, and all damages your orator has sustained thereby.

2. That the defendants and their associates, officers, attorneys, servants, clerks, agents and workmen, may be perpetually enjoined and restrained by writ of injunction issuing out of and under the seal of this Honorable Court, from directly or indirectly making or causing to be made, or selling or causing to be sold, any cylindrical, hard, molded, sound records, colored black in imitation of the cylindrical, hard, molded sound records sold and on sale by your orator; or any cylindrical, molded, sound records provided with a series of internal parallel ribs along its bore, in imitation of the cylindrical, molded sound records sold and on sale by your orator; or from applying the expression "Gold Moulded" to any sound record, which may be sold hereafter, or offered or advertised for sale by them.

3. That your Honors grant unto your orator a preliminary injunction issuing out of and under the seal of this Honorable Court, enjoining and restraining the said defendants and their associates, officers, attorneys, servants, clerks, agents and workmen to the same purpose, tenor and effect as hereinbefore prayed for with regard to the said perpetual injunction.

4. That said defendants may be decreed to pay the costs of this suit.

5. That your orator may have such other and fur-

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6. That the said defendants may, if they can, show why your orators should not have the relief prayed for, and may full true and perfect answer make, but not under oath (answer under oath being expressly waived) according to the best and utmost of their remembrance and belief to the several matters hereinbefore averred and set forth and particularly as if the same were repeated paragraph by paragraph and the said defendants specifically interrogated, may it please your Honors to grant unto your orators a writ of subpoena ad respondendum, issuing out of and under the seal of this Honorable Court, directed to the said defendants, American Graphophone Company and Columbia Phonograph Company, commanding them to appear and make answer to this Bill of Complaint, and to perform and abide by such orders and decrees herein, as to this Court may seem just.

And your orator will ever pray, etc.

Solicitor for Complainant,

Of Counsel.

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UNITED STATES OF AMERICA :
: ss.:
DISTRICT OF NEW JERSEY. :

On the day of August, 1904, before me personally appeared, J.F. Randolph, the Secretary of the National Phonograph Company, the complainant named, who, being duly affirmed, deposes and says that he is the Secretary of the National Phonograph Company, and familiar with its business, and that he has read the foregoing Bill of Complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters herein stated on information and belief, and as to those matters he believes it to be true; that the reason why this verification is not made by the complainant personally is because it is a corporation.

Sworn to and subscribed:
:
before me this day :
:
of August, 1904. :

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